

STATE OF MICHIGAN
COURT OF APPEALS

RAY A. CARLSON, Individually and as Personal
Representative of the Estate of TAMARA R.
CARLSON, Deceased, and as Next Friend and
Conservator of RAYMOND CARLSON, a Minor,
and DONALD FULLERTON, Individually and as
Personal Representative of the Estate of MICHAEL
FULLERTON, Deceased,

Plaintiffs-Appellees/Cross-Appellants,

v

WAYNE COUNTY ROAD COMMISSION,

Defendant-Appellant/Cross-appellee.

UNPUBLISHED
May 21, 1999

No. 185022
Wayne Circuit Court
LC No. 92-228180 NI

RAY A. CARLSON, Individually and as Personal
Representative of the Estate of TAMARA R.
CARLSON, Deceased, and as Next Friend and
Conservator of RAYMOND CARLSON, a Minor,
and DONALD FULLERTON, Individually and as
Personal Representative of the Estate of MICHAEL
FULLERTON, Deceased,

Plaintiffs-Appellees,

v

WAYNE COUNTY ROAD COMMISSION,

Defendant-Appellant.

No. 210966
Wayne Circuit Court
LC No. 92-228180 NI

Before: Kelly, P.J., and Holbrook and Murphy, JJ.

KELLY, P.J. (concurring).

I concur in result only. Absent unusual circumstances, issues not raised before the trial court may not be raised on appeal. *Peterman v Dep't of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994). The record does not show that the particular issue upon which defendant now relies, whether the trial court should have questioned the jurors at all when deciding the motion for new trial, was raised in the trial court. Had it been properly preserved I would hold the questioning improper based on *Hoffman v Spartan Stores, Inc*, 197 Mich App 289; 494 NW2d 811 (1992).

Defendant's initial response to plaintiffs' motion for new trial opposed a new trial based on plaintiffs' alleged inability to show prejudice. At the first hearing on the motion, the trial court, without objection, stated that it would have the jurors in question brought into court for questioning. At the next hearing, the only specific "legal" objection by defendant was that the questions should come from the court and not be leading in nature. After questioning, the arguments focused on the issue of prejudice, not whether the questioning was proper. Defendant's supplemental brief in support of the motion for new trial addressed the issue of prejudice, but made no claim that the jurors could not be questioned. At best, the record shows that defendant wanted the trial court, rather than the parties' counsel, to question the jurors.

Based on the fact that defendant's claim is unpreserved for review by this Court, I concur in the result reached by the majority.

/s/ Michael J. Kelly